

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Region 1 5 Post Office Square - Suite 100 BOSTON, MA 02109-3912

MAY 1 2 2016

URGENT LEGAL MATTER – PROMPT ATTENTION REQUIRED CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Philip DeNormandie 12 Marshall Street 2nd Floor Boston, MA 02108-2405

Re: Request for Information Pursuant to Section 308 of the Clean Water Act

Dear Mr. DeNormandie:

This letter concerns the discharge and redeposit of soil, rocks, sand and/or other dredged or fill materials into wetlands and/or waterways located on property owned by you at 65 Shaws Cove Road in Fairhaven, MA ("the Site"). See Attachments A (Fairhaven Property Map), and B (MA GIS: Department of Environmental Protection Wetlands Map). Recently, the U.S. Environmental Protection Agency ("EPA") discovered that an unnamed tributary and approximately 2 acres of freshwater wetlands on the Site may have been dredged, filled, excavated, and/or altered sometime between 2008 and the present in violation of the federal Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 et seq. Attached to this letter are a series of aerial photographs of the Site that show the general location and extent of the potential violation. See Attachments C through E. EPA's area of concern is identified as Area A on each of these Attachments.

Under the CWA, the discharge of pollutants (in this case soil, rocks, sand, and/or other dredged and fill material) into waters of the United States, including most wetlands, is unlawful except as authorized by, among other things, a permit issued pursuant to Section 404 of the Act, 33 U.S.C § 1344. The U.S. Army Corps of Engineers ("Corps") is responsible for accepting applications for and issuing or denying permits to perform such work, while EPA reviews and provides comments to the Corps on permit applications received. The Corps and EPA share enforcement responsibilities under the Act, which provides for both administrative and judicial penalties.

Section 308(a) of the Act, 33 U.S.C. § 1318(a), allows EPA to require the disclosure of information necessary to determine whether any person has violated any provision of the CWA, including Section 404. By this letter, EPA seeks information concerning the discharge and redeposit of dredged and/or fill material into wetlands at the Site.

Pursuant to Section 308, you are hereby requested to furnish the information identified below within 30 days of receipt of this letter. Failure to respond to this information request may subject you to administrative and judicial enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, including, among other things, the imposition of civil penalties.

I. Instructions

- Provide a separate narrative response to each and every question and subpart of a question set forth in this Information Request. Precede each answer with the text and the number of the question and its subpart to which the answer corresponds.
- Any documents relied upon or used to answer any of the questions or subpart of a
 question in this Information Request must be copied and submitted to EPA with your
 response. All documents must contain a notation indicating the question and subpart of
 the question to which they are responsive.
- If any question cannot be answered in full, answer to the extent possible. If your responses are qualified in any manner, please explain.

II. Definitions

For the purposes of this Information Request:

- The term "fill" means any material deposited on the Site, regardless of origin, including but not limited to, rock, sand, clay, gravel, manure, wood chips, stumpage, dredged spoil, and any other excavated or relocated material. Material moved locally from one location on a Site and placed in another location of the same Site meets the definition of "fill" for purposes of this Information Request.
- The term "dredged materials" or "dredged spoils" means any material that is excavated or dredged from a water body, including wetlands, streams, and tributaries.
- The term "deposit" means the placement, discharge, redeposit, redistribution, or addition of any material, including fill or dredged material, as defined above.

III. Respond to the Following

Unless otherwise stated, the questions in this Information Request pertain to the Site as a whole, as identified on Attachment A, and/or the area of the Site adjacent to the unnamed tributary labeled "Area A" and generally depicted on Attachments B, C, D, and E.

General Information Pertaining to the Site:

- Provide (a) the name, address, telephone number(s), and position of all persons or entities having an ownership interest in the parcel of property encompassing the Site; (b) a detailed description of each person or entity's ownership interest; (c) the date on which each person or entity acquired an interest in the Site; and (d) the entity or person from whom each person or entity acquired that interest.
- 2) Describe the use of the Site, including Area A, between 2005 and the present. What is the current use of the Site? Describe all future plans for the Site.
- 3) Provide all conservation easements, conservation restrictions, and other deed or property restrictions applicable to the Site, including Area A.

- 4) Provide all reports, aerial photographs, evaluations, and/or site plans that relate to the Site as a whole, Area A, or any subportion thereof, including soil reports, soil surveys, wetland delineations, engineering, construction, and survey reports prepared at any time. If you are not in possession of any of the reports listed above, please indicate the names, addresses, and telephone numbers of the parties who you believe may be, have been, or are in possession of such documents.
- Site dated August 30, 2012). Attachment C shows Area A prior to disturbance. Attachments D and E show substantial land clearing in Area A and stream work in the unnamed tributary. Specifically describe and provide the dates of all work conducted in Area A and the unnamed tributary between July 2008 and the present, including, but not limited to, any land clearing, stumping, grubbing, grading, tributary dredging and alteration, excavating, and/or filling. Using the Attachments, or other suitable document accurately depicting Area A of the Site, identify the location(s) in Area A where each of these activities took place.
- 6) Identify all persons (including their names, mailing addresses, and telephone numbers) who performed, directed, or supervised the work described in response to Question 5 above. Provide a description and the dates of the work performed, directed, or supervised by each person.
- 7) Identify the types of equipment used for the work described in response to Question 5 above, including any equipment used to clear vegetation and stumpage, dredge, and/or excavate, deposit, or move soil or other fill material in Area A, including the unnamed tributary. Provide the names and addresses of the owners and operators of this equipment and state the date(s) of operation at the Site.
- 8) Provide a list of all consultants, contractors, and subcontractors (including their names, mailing addresses, and telephone numbers) that performed, directed, or supervised work in Area A of the Site between July 2008 and the present. Provide a description and the dates of the work performed, directed, or supervised by each consultant, contractor, and subcontractor.
- 9) Provide copies of all contracts, invoices, or forms of proof of payment you have, or have had, with the consultants, contractors, and subcontractors listed in response to Question 8 above. If no contracts or related paper work exist, describe your business arrangement with each consultant, contractor, and subcontractor relative to work at the Site.
- 10) State whether dredged and/or fill materials were discharged into wetlands, tributaries, or other waters anywhere in Area A or elsewhere on the Site. Using the Attachments, or other suitable document accurately depicting the Site, identify the location of any discharges of dredged and/or fill material into such wetlands, tributaries, or other waters and provide the size of impact to wetlands, tributaries, and/or other waters in square feet or acres.
- 11) State whether a Corps permit was obtained for the discharge of dredged and/or fill material into wetlands, tributaries, or other waters in Area A or elsewhere on the Site. Identify who was responsible for obtaining Corps permits for work on the Site and

provide a copy of any such permit. If you believe that a Corps permit was not required, state with specificity the reasons for such belief.

- 12) Provide copies of all written and electronic correspondence, including but not limited to any permits or applications for permits, with any local, state, or federal government agency pertaining to the deposit, retention, or removal of dredged and/or fill material into wetlands, tributaries, and other waters in Area A or elsewhere on the Site. In addition, provide copies of all written and electronic correspondence pertaining to any other work occurring in wetlands or waters in Area A or elsewhere on the Site.
- 13) Describe all verbal communications with any local, state, or federal government agency, pertaining to the deposit, retention, or removal of dredged and/or fill material, or to any other work occurring in the wetlands, tributaries, or other waters in Area A or elsewhere on the Site, including the identity of all persons involved, the date of such communications, and the substance of the communications.
- 14) Have you or anyone else with an ownership interest in the Site ever sought a Corps permit for past projects involving work in wetlands, tributaries, or other waters? Please provide information indicating the name and location of the property, the date of the application or transaction, the type of activity, and a copy of the permit or any documents relative to your communications with the Corps.

You may assert a business confidentiality claim with respect to part or all of the information submitted to EPA in the manner described at 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by the means, of the procedures set forth in 40 C.F.R 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to you. Please be aware that state laws governing confidential business information may differ from the federal regulations.

If you have a consultant, attorney, or other agent respond to this inquire on your behalf, please include a certification, stating that such agent has the authority to respond for you; and sign the return "Declaration" form provided. This certification must include your signature.

Please be aware that failure to respond to this information request may subject you to administrative and judicial enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, including, among other things, imposition of civil penalties.

Please address your response, send by certified mail, to:

Mr. Raymond Putnam
Office of Environmental Stewardship
U.S. EPA Region 1
5 Post Office Square, Suite 100, Mail Code OES04-1
Boston, Massachusetts 02109-3912.

If you have any technical questions concerning the required information, please contact Raymond Putnam of my staff at (617) 918-1523. If you have any legal questions, or if your attorney wishes to communicate with the EPA on your behalf, please contact Laura Beveridge at (617) 918-1345.

Sincerely,

James Chow, Manager

Technical Enforcement Office

Office of Environmental Stewardship

Attachments:

Attachments A-E

Small Business Information Sheet Declaration – Agent Certification

Cc:

Jim Mahala

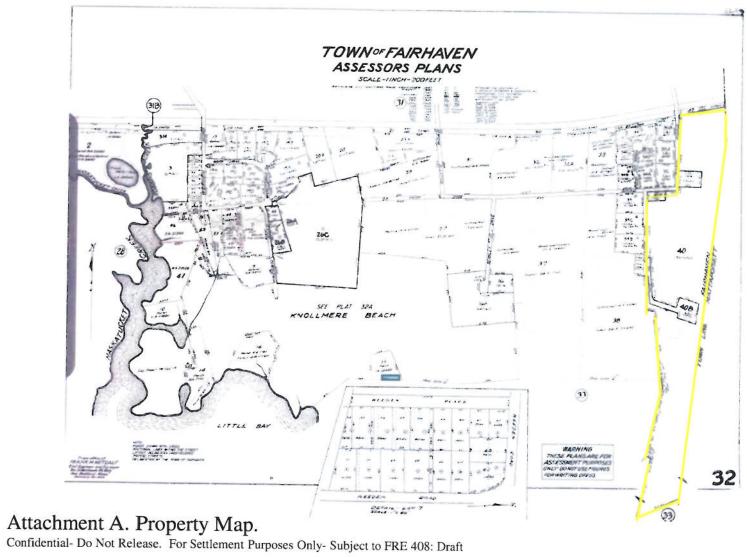
MA DEP

Southeast Regional Office

Alan Anacheka-Nasemann Regulatory Division U.S. Army Corps of Engineers Concord, MA

Raymond Putnam, Ph.D. U.S. EPA, Region 1 – New England

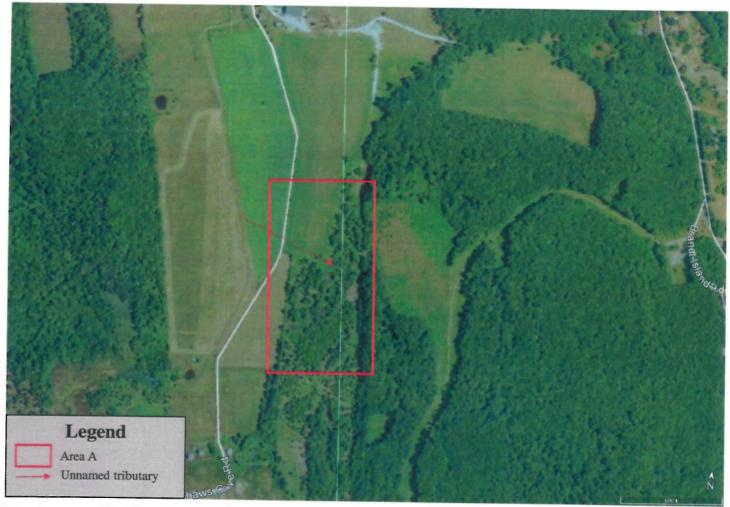
Laura Beveridge, Esq. U.S. EPA, Region 1 – New England





Attachment B. MA GIS: DEP Wetlands Map.

Confidential- Do Not Release. For Settlement Purposes Only- Subject to FRE 408. Draft



Attachment C. Google Earth Aerial Photograph: 7/15/2008. Confidential- Do Not Release. For Settlement Purposes Only- Subject to FRE 408. Draft



Attachment D. Google Earth Aerial Photograph: 4/30/2010. Confidential- Do Not Release. For Settlement Purposes Only- Subject to FRE 408. Draft



Attachment E. Google Earth Aerial Photograph: 8/30/2012. Confidential- Do Not Release. For Settlement Purposes Only- Subject to FRE 408. Draft

Office of Enforcement and Compliance Assurance

INFORMATION SHEET

U. S. EPA Small Business Resources

f you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find costeffective ways to comply through the use of pollution prevention and other innovative technologies

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners

U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center

(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act

(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Holling provides regulatory and technical assistance information. (www.epa.gov/sbo or 1-800-368-5888)

provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers (www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.

(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse

(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline

(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information

(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance information Service also includes asbestos inquiries.

(1-202-554-1404)

Wetlands Helpline

(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman

(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage

(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated.

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy

(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy

(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards. you still have the duty to comply with the law, including providing timely responses to EPA information requests. administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

DECLARATION

I declare under penalty of perjury that I am	
	(Name)
I have authorized(Name of Consultant)	to respond on
(Name of Consultant)	
behalf of	and that the foregoing is a
(Business Name)	
complete, true, and correct response.	
Executed on	
(Date)	(Signature)
	(Type Name and Title)